In the Supreme Court of the United States

Supreme Court, U. S.
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OCTOBER TERM, 1976

No. 73, Original

STATE OF CALIFORNIA,

Plaintiff,

v.

STATE OF NEVADA,

Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

EVELLE J. YOUNGER
Attorney General of the State of California

N. GREGORY TAYLOR
Assistant Attorney General

JAN S. STEVENS
Assistant Attorney General

ALLAN J. GOODMAN
Deputy Attorney General

ROBERT D. BRETON
Deputy Attorney General

MARGARET RODDA
Deputy Attorney General

555 Capitol Mall, Suite 350
Sacramento, California 95814
Telephone: (916) 445-6946

Counsel for Plaintiff, State of California

SORG PRINTING COMPANY OF CALIFORNIA, 341 FIRST STREET, SAN FRANCISCO 94105

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MOTION FOR LEAVE TO FILE COMPLAINT

The State of California, appearing by its Attorney General, Evelle J. Younger, respectfully requests leave of the Court to file its Complaint against the State of Nevada submitted herewith.

EVELLE J. YOUNGER
Attorney General of the
State of California
Counsel for Plaintiff

STATEMENT IN SUPPORT OF MOTION

INTRODUCTION

This is an action by the State of California against the State of Nevada to establish the California-Nevada boundary from Lake Tahoe to the Oregon border.

Only this Court, exercising its original jurisdiction, can provide the relief necessary to settle a boundary which has been the subject of controversy ranging from scientific dispute to armed warfare for the one hundred twenty-seven years of its existence. The boundary dispute between states is, of course, the most frequent occasion for the invocation of original jurisdiction, Stern and Gressman, Supreme Court Practice § 10.2, p. 394 (Fourth Ed. 1969); Note, The Original Jurisdiction of the United States Supreme Court, 11 Stanford Law Rev. 665, 671, n. 46 (1959), and the most appropriate, since no other tribunal can adjudicate the rights of these two sovereign parties.

Both the California and Nevada Constitutions, as approved by Congress, provide that the boundary in question—that north of the 39th degree north latitude and south of the 42nd degree north latitude—is the 120th meridian of west longitude. Calif. Const. of 1849, Art. XII, § 1, (now Calif. Const. Art. III, § 2); Nevada Const. Art. 14, § 1; Act of Sept. 9, 1850, c. 50, 9 Stat. 452; Act of March 21, 1864, c. 36, 13 Stat. 30; Proclamation No. 22, 13 Stat. 749 (Oct. 31, 1864).[1]

In 1863, the Legislature of California authorized a joint survey of the 120th meridian, and Nevada's Governor agreed to participate. Calif. Stats. 1863, C. 402, p. 617; Annual Report of the Surveyor General of California, p.

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1. Although the Nevada Constitution provides for a western boundary fixed by "the forty-third degree of west longitude and eastern boundary line of the State of California," the reference to the forty-third degree was apparently erroneous and has never been observed or even suggested as an alternative boundary. See Van Zandt, "Boundaries of the United States and the Several States," Geological Survey Professional Paper 909, p. 158 (U.S. Govt. Printing Office 1976). Even if it were proposed as an alternative, it appears that the stated occupancy description should control. (Powell, The Law of Real Property § 890, pp. 210-214 (1977)).

35 (1863). Under the California State Surveyor General, J. F. Houghton, and the Commissioner for the Territory of Nevada, Butler Ives, a line was surveyed and marked. This line was subsequently adopted by both California, (Stats. 1864, C. 455, p. 506; Stats. 1943, C. 134, p. 898), and Nevada (Stats. 1864-5, p. 134), as the interstate boundary.

Although the "Houghton-Ives" line remains to this day the statutory boundary, it was recognized only for eight years. In the early 1870's the United States General Land Office employed Allexey W. Von Schmidt to resurvey the eastern boundary. Von Schmidt's survey was completed and marked by 1872. Since that date both states have utilized the Von Schmidt line in exercise of criminal and civil jurisdiction, levying taxes, and providing governmental services.

However, irregularities in the "Von Schmidt" line were suggested in limited resurveys conducted by surveyors Grunsky and Minto in 1889 and by the United States Coast and Geodetic Survey in 1893.

Thus, although the State of Nevada has, for 105 years, acquiesced in California's jurisdiction over lands between the 1863 "Houghton-Ives" line and that established by Von Schmidt, by statute she asserts jurisdiction to the "Houghton-Ives" line some 3000 feet to the west.

I. BACKGROUND OF CONTROVERSY

This Court is asked, in this action, to give finality to a boundary which has been the subject of continuous dispute and controversy since its establishment in 1849. *E.g.*, "Honey Lake: the Sagebrush Secession," Hinkle, Sierra Nevada Lakes, (Bobbs-Merrill Co. 1st Ed. 1949); Mack, "Nevada," pp. 398-402 (Arthur Clark Co. 1936). It led to a brief "sagebrush war" in February, 1863, Hinkle,

supra, and to the anamolous situation in which one city, the location of which was in dispute, elected at once the speakers of both the Nevada and California state assemblies. Mack, *supra,* at 404.

A. The California-Utah Boundary Established in 1850: The 120th Meridian First Designated as the Eastern Boundary of California.

On the same day that California was admitted as a State, the Territory of Utah was formed to include roughly the areas that are now Nevada and Utah. Act of Sept. 9, 1850, C. 51, 9 Stat. 453. The new territory was to be "bounded on the west by the State of California. . . ."

The Carson Valley and other areas adjacent to the then California-Utah boundary were soon settled, and questions arose almost immediately as to the jurisdiction of communities separated from California's courts and officers by the Sierras, and from Utah's capital by hundreds of miles of desert. Angel (Ed.) History of Nevada 11-19 (Oakland, 1881). The Surveyor General of California was requested to determine the location of the boundary with respect to the Carson Valley in 1852. Though no complete survey was made, he investigated and, with commendable candor, concluded that the valley lay beyond California's borders. Annual Report of the Surveyor General 14, (Dec. 15, 1852), Calif. Sen. Journal (1853 Reg. Sess.), App. Doc. No. 3.

In February, 1853, residents of the Carson Valley petitioned the California Legislature for annexation on the grounds that they were neglected by the Utah government and at the mercy of bands of criminals from California. Calif. Sen. Journal 90, 130-131 (1853 Reg. Sess.), App. Doc. No. 46. They continued their attempts to join California for several years, Calif. Assembly Journal 141, (1855 Reg.

Sess.). See First Biennial Report, Nevada Historical Society 1907-1908, pp. 122-123 (Nevada State Printing Office 1909). *See,* generally, Thomas, "The California-Nevada Boundary," Annals of the Association of American Geographers, vol. XLII, p. 51 (March, 1952).

California then urged Congress to provide for a survey of the eastern border, but to no avail. Stats. of 1858, C. 21, p. 356.

B. Nevada Territory Is Formed: The Crest of the Sierras Authorized As an Alternative Boundary.

The next significant step was formation of the Territory of Nevada, with a conditional western boundary to run along the crest of the Sierras (*i.e.*, . . ." . . . to the dividing ridge separating the waters of Carson Valley from those that flow into the Pacific; thence on said dividing ridge northwardly to the forty-first degree of north latitude . . .", but only

> "Provided that so much of the territory within the present limits of the State of California shall not be included within this Territory until the State of California shall assent to the same." Act of March 2, 1861, C. 133, 12 Stat. 209-210.

A bill which would have given California's approval to the new boundary failed in 1861. Calif. Sen. Journal 535, 559, 862 (1861 Reg. Sess.)

Although, as indicated above, California declined to accede to the proposed Sierra Crest boundary, she agreed to cooperate with Nevada in a joint boundary survey. Calif. Senate and Assembly Journal, App. No. 34, pp. 31-32 (1863); Stats. 1863, C. 402, p. 617.

C. Controversy Turns to Violence: The "Sagebrush War."

Meanwhile, the ambiguity of the California-Nevada line was causing serious uncertainties that culminated in a brief war over the jurisdiction of lands north of Lake Tahoe. There, the Territory of Nevada organized Roop County in 1862. This county was to extend to Nevada's western boundary, then arguably the crest of the Sierras. Laws of Nevada Territory 6 (1862). This presumed boundary of the new county therefore appeared to overlap that of California's Plumas County, which bordered on California's unmarked eastern boundary. The Nevada Legislature validated all rights acquired in the border zone under California law, and authorized the transfer of pending cases to Nevada courts. *I.d.*, pp. 37-39. Residents reportedly claimed residence in California or Nevada depending upon which tax collector was demanding payment. Thomas, "The California Nevada Boundary," *supra* at 59. Mack, "Nevada," *supra* at 399.

At the first session of the Nevada Circuit Court in Susanville, a Roop County judge issued an injunction against his Plumas County counterpart restraining him from holding court in Roop County. When the judge ignored this order, he was fined for contempt of court, imprisoned, then released on parole. A Plumas County judge then issued an injunction against both the judge and sheriff for Roop County, which was promptly countered by another Roop County injunction against the California sheriff and his deputies.

Meanwhile, the Plumas County Sheriff arrested the Roop County Sheriff and judge, charging them with usurpation of office. They were released by a body of Nevadans. The Plumas Sheriff then gathered a posse of 180 men and, with a small cannon, returned to the disputed area. In the ensuing battle of several hours' duration, several persons were

wounded. Finally an armistice was arranged and agreement made to refer the dispute to the Governors of Nevada and California. Mack, Nevada, *supra* at 399-402.

Similar problems were arising in the south where in 1861 California had established Aurora as the county seat of Mono County. Stats. 1861, C. 233, p. 235. Nevada, acting in the belief that Aurora was within its territory then made it the county seat of Nevada's Esmeralda County. California and Nevada judges functioned side by side, and in the September, 1863 election, citizens were permitted to vote at once for both Esmeralda and Mono County officers and state representatives. An Aurora resident was elected to the California Assembly and another to Nevada's lower house. Each was chosen speaker of his respective body. Mack, Nevada, *supra* at 404.

II. SURVEYS AND INVESTIGATIONS OF THE 120th MERIDIAN BOUNDARY

1. *The Goddard Survey of 1855.* Acting under instructions from the California Surveyor General, George C. Goddard made a limited survey to determine the location of California's eastern boundary with reference to the Carson Valley. Calif. Assembly Journal 7th Sess., App. Doc. No. 92; Sinclair, "The Oblique Boundary Line Between California and Nevada," Report 1900; App. 3 Report of the Superintendent of the Coast and Geodetic Survey 1899-1900, pp. 264-266 (Govt. Printing Office 1900).

2. *The Higley Survey of 1860.* The first survey purporting to locate the 120th meridian north of Lake Tahoe was performed by H. A. Higley, California State Surveyor General. The work was done under authority of an 1859 act of the State Legislature. Calif. Stats. of 1859, C. 291, p. 313. Higley apparently projected north Goddard's determination of the 120th meridian, to a point approximately

35 miles north of Lake Tahoe. At that point he was informed of an upcoming federal survey of the same boundary line, to be performed by U.S. Commissioner Sylvester Mowry. Higley therefore terminated his work in favor of an anticipated joint effort with the United States. *See* Uzes, "California-Nevada Boundary," Report of California State Lands Commission (March 25, 1977).

3. *The Mowry-Ives survey of 1861.* The first surveying effort attempting to fix the eastern boundary of California and Nevada under Congressional authorization was performed by Sylvester Mowry and Lieutenant Joseph C. Ives. 12 U.S. Stat. 110, Cong. Globe, 36 Cong. 1 sess. 475 (1860). This party, however, was successful only in fixing two points: the point where the Colorado River intersects the 35th degree of latitude and the location in the southeastern corner of Lake Tahoe of the angle formed by the oblique line extended from the Colorado River point to the 120th meridian. Report of Interior Dept., 1861-1862, p. 490; Mack, Nevada, *supra* at 392.

4. *The Houghton-Ives line of 1864.* Continuing uncertainty led to California's decision to authorize a survey to establish the state's eastern boundary and to request the Governor of Nevada to join in such a survey. Calif. Stats. of 1863, C. 402, p. 617. (California's Surveyor General had urged such a survey each year from 1855 to 1861, Calif. Sen. J., 4th Sess. to 14th; App., Reports of Surveyor General, 1855-1861). Butler Ives was appointed Commissioner of Nevada by Acting-Governor Orion Clemens, Surveyor General J. F. Houghton was authorized to represent the State of California, and John Kidder was appointed engineer-in-chief. Annual Report of the California Surveyor General, pp. 35-36 (1863). Although problems of terrain and hostile Indians were severe, *Id.*, pp. 35-46 (1863), they succeeded in establishing a common boundary line north of

Lake Tahoe which was accepted by both California and Nevada. Calif. Stats. of 1864, C. 455, pp. 506; Nevada Stats. of 1864-1865, p. 134.

The "Houghton-Ives" line remains the *statutory* boundary from Lake Tahoe to Oregon to this day. Calif. Govt. Code § 160.

The "Houghton-Ives" line, however, was never recognized by Congress despite the recommendations of the United States Commissioner of the General Land Office. Messages and Docs., Interior Dept., 1866-1867, p. 374; *Id.*, 1871-1872, p. 54. *See* Report of Nevada Historical Society, 1907-1908, *supra,* at 131.

5. *The "Von Schmidt" survey of 1872.* When variations were found in a subsequent survey of the northern boundary of California, the United States Commissioner of the General Land Office succeeded in obtaining Congressional authorization for another survey of the California-Nevada line. Messages and Docs., Interior Dept. 1871-1872, p. 54; Act of June 10, 1872, C. 415, Stat. 358. This work was done by contract with Allexey W. Von Schmidt, who surveyed and marked the line recognized in fact by both states since 1872. Messages and Docs., Interior Dept. 1873-1874, p. 7; 1874-1875, p. 13. At the north shore of Lake Tahoe, Von Schmidt moved the earlier "Houghton-Ives" monument some three-fourths of a mile east and replaced its original date—1863—with "1872." "Report of the Civil Engineers on the State Boundary Line," Report of the Surveyor General of California, 1888-1890, p. 16 (1890).

6. *The Grunsky-Minto survey of 1889.* In 1889, the California Legislature passed an act directing the State Surveyor General to "correct and establish that portion of the eastern boundary line of the State . . . southeastward from Lake Tahoe" (i.e., southeast from the intersection of

the thirty-ninth degree north latitude with the one-hundred twentieth meridian of longitude). Calif. Stats. 1889, C. 31, p. 38. The Surveyor General appointed C. E. Grunsky and William Minto to make the required survey. Report of the Surveyor General of California, 1888-1890, p. 12-13 (1890). They reported that the line monumented by Von Schmidt was "one thousand six hundred and nine feet too far west at the northern shore of Lake Tahoe." *Id.* at 15.

7. *The Coast and Geodetic survey of 1893.* In 1893 Congress authorized a resurvey of the oblique boundary between California and Nevada, from Lake Tahoe to the Colorado River. 28 Stat. 380, 921. Although this survey was, by definition, to begin at the intersection of the 120th meridian and the 39th degree of north latitude and proceed south to the Colorado River, it led to reexamination of the boundary at the north shore of Lake Tahoe. It was concluded that the Von Schmidt monument had been placed 1727 feet too far west. "The Oblique Boundary Line Between California and Nevada," Coast and Geodetic Survey Report 1900, App. No. 3, p. 284. The report, which concluded that with respect to its survey of the southern boundary, Nevada gained 321 square miles (*Id* at 314), summarized its findings with respect to the north shore of Lake Tahoe as follows:

> "Undoubtedly the meridian north from Lake Tahoe is in error, but the appropriation does not provide for this. If found to be a serious matter, it can be corrected in the future." *Id* at 368.

CONCLUSION

Since its establishment in 1872, the "Von Schmidt" line has been observed by both states in assessments, the levy of taxes, and the enforcement of civil and criminal jurisdiction. Nevertheless, this line never has been approved by

Congress. The *statutory* line as defined by the two states remains the earlier "Houghton-Ives" line, 3000 feet to the west. The ever-present possibility of challenges to long-standing jurisdiction brings this request for judicial relief.

Thus it appears that the boundary between California and Nevada from Lake Tahoe to Oregon is in serious need of judicial clarification. Although the federally approved boundary is the 120th meridian, the proper placement of this line is in serious doubt:

1) The "Houghton-Ives" line—the statutory line—set forth in the laws of both states since 1864 has not been observed for the last 105 years, but could be raised at any time as a defense to a criminal proceeding, grounds for a refusal to pay taxes, or a rationale to engage in business prohibited by the laws of one state but permitted by the other. *Cf. Pope v. Blanton,* 10 Fed. Supp. 18 (N.D. Fla. 1935) modified in 299 U.S. 521 (1936).

2) The "Von Schmidt" line—observed by both states since 1872—has no basis for recognition in statute.

3) Later investigations have raised the spector of a third line, neither sought nor observed by either state, some 1727 feet east of the presently recognized "Von Schmidt" line.

The uncertainty of these lines has already caused the introduction of a resolution in the California Legislature calling for action to "unify and defend" the California-Nevada boundary. Assembly Concurrent Resolution 34 (1977-78 Reg. Sess.), Exhibit "A" hereto.

The need for prompt clarification precludes resort to compact legislation. We are informed that the Nevada Legislature will adjourn during the month of April, 1977, and will not return until January 1979. The additional need for Congressional ratification would mean no less than two and a half years in which titles would be clouded and jurisdiction in doubt.

Only this Court exercising its original jurisdiction can bring certainty and settle the serious concerns of both states by accepting the complaint submitted herein and issuing an interlocutory order preserving the rights of the parties and persons acting under the authority of their laws during the pendency of this action.

Respectfully submitted,

EVELLE J. YOUNGER
Attorney General of the State of California

N. GREGORY TAYLOR
Assistant Attorney General

JAN S. STEVENS
Assistant Attorney General

ALLAN J. GOODMAN
Deputy Attorney General

ROBERT D. BRETON
Deputy Attorney General

MARGARET RODDA
Deputy Attorney General

Counsel for Plaintiff, State of California